

Message

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Sent: 12/21/2021 11:31:56 PM
To: Carl Garvey [cgarvey@racertrust.org]
Subject: RE: RACER Trust Quarterly Report to the Representatives of the Signatory Parties to the Trust Settlement Agreement

Merry Christmas Carl. Best to you and yours.

From: Carl Garvey <cgarvey@racertrust.org>
Sent: Tuesday, December 21, 2021 4:13 PM
To: Roberts, Robert <Roberts.Robert@epa.gov>; 'Wieder.Marla@epa.gov'; 'Cisneros.Jose@epa.gov'; 'Robert.Phillips@state.de.us'; 'James.Kropid@Illinois.gov'; 'TJunk@idem.in.gov'; 'negeleb@michigan.gov'; 'laurie.stevenson@epa.state.oh.us'; 'DGrandis@oag.state.va.us'; 'Chris.Ratcliff@la.gov'; 'Kelly.Anne@epa.gov'; 'gkarr@atg.state.il.us'; 'timothy.kern@ohioattorneygeneral.gov'; 'Richard.Engel@law.njoag.gov'; 'SynkP@michigan.gov'; Alan.Tenenbaum@usdoj.gov; 'Capon.Virginia@epa.gov'; patrick.casey@usdoj.gov; 'arrazola.ignacio@epa.gov'; Overmeyer, Patricia <Overmeyer.Patricia@epa.gov>; 'April Lashbrook - Indiana Department of Environmental Management' <alashbro@idem.IN.gov>; Beedle, Michael <beedle.michael@epa.gov>; mark.rickrich@epa.ohio.gov; 'katherine.smith@treasury.gov'; Davis, Jennifer (DEP) <jennifer.davis@mass.gov>; Lisa Shook <lisa.shook@epa.ohio.gov>; Michelle.Dickerman@treasury.gov; lancu, Carol (AGO <carol.iancu@state.ma.us>; Michael E. Idzkowski <Michael.Idzkowski@ohioattorneygeneral.gov>; privitera@mltw.com; Valerie.wilder@dnr.mo.gov; Singerman, Joel <Singerman.Joel@epa.gov>; ofschiefcounselnotices@do.treas.gov; rockafellowd@michigan.gov; janet.dimaggio@wisconsin.gov; Kevin Halloran <khalloran@pa.gov>; chinwe.ndubuka@dnr.mo.gov; Jamie.woods@ag.ny.gov; Ermisch, Brad (DEQ) <ERMISCHB@michigan.gov>; Don Stilz <dstilz@idem.IN.gov>; margaret.sheen@dec.ny.gov; scott.stacey@dnr.mo.gov; john.cook@ks.gov; ConfortiR@michigan.gov; John McCabe <MCCABEJ@michigan.gov>; priya.agarwal2@treasury.gov; Greenert, Brian L. <bgreenert@pa.gov>; danielle.christensen@treasury.gov; Stanhope, Jennifer <Stanhope.Jennifer@epa.gov>; Koller, Mark <koller.mark@epa.gov>; Sun, Anthony (USANYS) <anthony.sun@usdoj.gov>; christopher.dove@treasury.gov; Kimberly Tyson <tysonk@michigan.gov>; Doyle, James <Doyle.James@epa.gov>; Sacks, Victoria <Sacks.Victoria@epa.gov>; Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Elliott Laws <elaws@racertrust.org>; Scott Hamilton <shamilton@racertrust.org>; Bruce Rasher <brasher@racertrust.org>; Rick Zablocki <rzablocki@racertrust.org>; Robert Hare <rhare@racertrust.org>; Tracie Nichols <tnichols@racertrust.org>; Brendan Mullen <bullen@racertrust.org>; Patricia Spitzley <pspitzley@racertrust.org>; Steve Black <sblack@racertrust.org>; Grant Trigger <gtrigger@racertrust.org>; Pam Barnett <pbarnett@racertrust.org>; dfavero@racertrust.org; Nathan Etu <netu@racertrust.org>
Subject: RACER Trust Quarterly Report to the Representatives of the Signatory Parties to the Trust Settlement Agreement

Dear Representatives of the Settlement Agreement Signatory Parties:

In lieu of a RACER Quarterly Call, we are sending you this email to update you on the Trust's Financial & Accounting, Redevelopment, and Litigation information/activities since our last call, which was this past September. Please let me know if you have any questions or comments on the information provided below.

On behalf of my RACER colleagues and myself, I wish you all Very Happy Holidays and a Healthy New Year.

--Carl Garvey

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FINANCE & ACCOUNTING UPDATE:

- The following is a summary of RACER's Funding Accounts as of November 30, 2021:

	Account Balance as of 11/30/2021
Minimum Estimated Property Funding Account	\$ 59,679,192
Reserve Property Funding Account	41,044,429
Long Term OMM Property Funding Account	96,226,608
Cushion Funding Account	23,433,792
Total Environmental Funding Accounts	\$ 220,384,022
Administrative Funding Account	\$ 84,975,977
Administrative Reserve Funding Account	46,748,220
Total Administrative Funding Accounts	\$ 131,724,197
Grand Total RACER Funding Accounts	\$ 352,108,219
Cushion funding	\$ 23,433,792
Administrative funding reserve	46,748,220
Total available for cushion eligible costs	\$ 70,182,013

- RACER submitted its 2022 Administrative Budget to the U.S. Department of the Treasury for approval on December 20, 2021.
- UHY financial audit for the year ending December 31, 2021 progressing as expected and consistent with prior years audits.
 - Environmental site visits completed during Q4 2021.
 - Fieldwork scheduled to begin mid March 2022.
 - RACER anticipates audit report being issued in early May 2022.

REDEVELOPMENT UPDATE:

RACER Trust's redevelopment activities since the last update, which was provided on September 20, 2021.

The summaries contained herein provide as much detailed information, including the identity of the buyer and intended, as is permissible under the terms of the Confidentiality Agreement executed with each RACER prospect. The buyer's name and intended use are mentioned below only if it has already been publicly disclosed.

RACER closed the following sales:

1. On 12/17/2021, RACER sold a portion of the Pontiac North Campus, MI (#11970), 711 North Glenwood Avenue, Pontiac, comprised of 72+/- acres, to the USPS, after the USPS exercised its option to purchase per the terms of the ground lease assumed by RACER on its effective date.

RACER is under contract to sell the following properties, listed in the order of the contract's Outside Closing Date:

1. PSA entered into 1/22/2021, for the preponderance of the remaining portion of the Muncie Industrial Land, IN (#13160), comprised of 53+/- acres of vacant land, with the City of Muncie, for the construction of a solar field with up to 24.6 million kWh of generating capacity. The Outside Closing Date ("OCD") is 2/22/2022.
2. PSA entered into 7/17/2019, for the Van Buren Industrial Land property, MI (#10060), comprised of 76+/- acres, with a commercial/industrial real estate developer for the construction of industrial uses. The OCD is 1Q2022.
3. POA entered into 10/28/2020, for the Allison Gas Turbine Landfill Land, IN (#13250), comprised of 10+/- acres, with an industrial manufacturing company, for use as green space, solar, and/or employee parking. The OCD is 4/29/2022.
4. PSAs entered into 11/18/2017, for RACER's Lansing-area properties, MI (#13002, 13003, 13010, and a portion of 13001), comprised of 259+/- acres of land and a 14,000-SF building, with NorthPoint Development, LLC, for the construction of a manufacturing and warehouse logistics industrial park. The OCD is 7/14/2022.
5. PSA entered into 9/17/2021, for a portion of Textile Rd., Ypsilanti Twp., MI (#11080), comprised of 50+/- acres of vacant land, with a multi-family residential developer for the construction of 102 residential apartment homes. The OCD is 10/13/2022.
6. PSA entered into 7/12/2019, for the northern 170+/- acres of land and 4,000-SF of miscellaneous buildings at the Massena Powertrain Plant, NY (#12000). The OCD is 1/1/2023.

RACER is currently in active discussions with prospects for the sale of the following properties:

1. The remaining 353+/- acres of land of the Buick City, MI (#12950), to an industrial real estate developer for the construction of a multi-tenant manufacturing and warehouse logistics industrial park.
2. Windiate Park Lot #10 in Flint, MI (#12970), to a multi-family residential developer for the construction of residential units.
3. A 0.4-acre portion of the Pontiac North Campus, MI (#11970), to a retail gas station operator for the construction of a 2-bay automatic carwash.
4. Lansing Plant 2, MI (#13001), to a rail operator for the construction of a multimodal facility for bulk commodities.
5. Saginaw Nodular Iron, MI (#10040), to a construction contractor for the construction of an industrial building and use as an equipment yard.
6. Remainder of Tract B-South, Delphi I, Anderson, IN (#13200), to a trucking company for the construction of a warehouse.
7. Raible Ave. parcel, Delphi I, Anderson, IN (#13200), to a farmer for agricultural use.
8. Remainder of Tract B-South and Raible Ave. parcel, Delphi I, Anderson, IN (#13200), to a solar developer for the construction of a solar field.
9. Portion of Toledo (#10990), to the City of Toledo, OH for the construction of elevated water storage tanks and pumping station for Toledo's municipal water supply system.
10. Hyatt Hills Golf Complex, NJ (#10080), to a golf course operator for continued use as a golf course.

RACER is currently in active discussions with prospects for leasing the following properties for solar development:

1. Bay City, MI
2. Coldwater Road Landfill, MI
3. Elyria, OH
4. Hemphill Road Landfill, MI
5. Linden Road Landfill, MI
6. Massena Powertrain Plant, NY (landfill portion)
7. Raible Ave. parcel, Anderson, IN
8. Toledo Landfill, OH

LITIGATION UPDATE:

Ley Creek Litigation

- Without objection from the Defendants and with the consent of the Court, RACER filed a Second Amended Complaint (“SAC”) in the U.S. District Court for Northern District of New York on November 17, 2021. In the SAC, our amendments included letting several parties out of the lawsuit because of bankruptcy, adding information about the new Remedial Design Administrative Order on Consent that we entered into with USEPA Region 2 on September 30, 2021, and generally making changes reflective of the favorable decision we received in this litigation from the U.S. Court of Appeals for the Second Circuit.
- Hearings on any Motions to Dismiss the SAC will likely not take place until mid-Summer of 2022, with the Defendants’ Answers due sometime thereafter.
- In the meantime, RACER may seek a court order to obtain samples from Sanders Creek and its banks, given Carrier Corporation’s impending RCRA corrective action to address PCB contamination there. Sanders Creek is a tributary of Ley Creek located approximately a mile upstream of the section of Ley Creek that RACER is under order to address.

Pontiac North – U.S. Postal Service Parcel Litigation

- On December 17, 2021, RACER settled the declaratory judgment action it had brought against its contract vendee ECALP Corp. and which the U.S. Postal Service joined and moved to the U.S. District Court for Eastern Michigan. On the same date, RACER conveyed title to the subject property to the U.S. Postal Service.
- The toxic tort action brought by current and former Postal Service workers against RACER in 2018 regarding the U.S. Postal Service Metroplex facility continues. This case is still in discovery and its defense is now being funded by RACER’s insurer, AIG. RACER and AIG are working through our common defense counsel to seek reimbursement of our joint defense costs via various administrative processes within the Postal Service.

Ewing Township – Monitoring Well Damage Litigation

- On October 1, 2021, RACER brought suit in Middlesex County Superior Court against its buyer of the Ewing Township (NJ) real property, Parkway Town Center Urban Renewal (“PTCUR”), for reimbursement of groundwater monitoring well (“MW”) damage response costs. PTCUR, which is affiliated with Atlantic Realty Development Corp., is intensively redeveloping this former GMC facility for a new residential/commercial community. In the process of its redevelopment activities, much of RACER’s extensive network of MWs has been damaged or destroyed. RACER has already paid to repair or replace many of the affected MWs. The lawsuit seeks to hold PTCUR to its contractual obligation to RACER to reimburse us for such costs, and also seeks to enjoin PTCUR from further damaging the MWs. Our continued sampling from these MWs is required by the New Jersey Department of Environmental Protection and RACER’s Licensed Site Remediation Professional to help ascertain both

the quality of groundwater at this property and the efficacy of RACER's groundwater treatment remedy there. PTCUR's response to the litigation is now due in early January of 2022.